



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

March 11, 1997

Ms. Mary Keller  
Senior Associate Commissioner  
Legal and Compliance  
Texas Department of Insurance  
P.O. Box 149104  
Austin, Texas 78714-9104

OR97-0521

Dear Ms. Keller:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 104245.

The Texas Department of Insurance (the "department") received two requests for information relating to Texas Central Life Insurance Company, including certain bid proposals submitted to the department. You state that the department has provided some of the requested information to the requestor. However, you claim that the remainder of the requested information may be excepted from disclosure under sections 552.110 and 552.111 of the Government Code. Pursuant to section 552.305 of the Government Code, this office informed Jack M. Webb & Associates, Inc. ("Webb"), whose bid proposal was requested, of the request and of its obligation to submit to this office its arguments as to why any claimed exceptions to disclosure apply to its information. Webb replied, claiming that its proposal is not subject to the provisions of chapter 552, and that, if it is, section 552.104 of the Government Code excepts its bid from disclosure.<sup>1</sup>

We first address Webb's claim that the records are records of the judiciary and, therefore, not subject to the provisions of chapter 552. See Gov't Code § 552.003(1)(B). In *El Paso Electric Co. v. Texas Department of Insurance*, No. 95-0943, 1996 WL 714313 (Tex. Dec. 13, 1996), the Texas Supreme Court reversed a case previously relied upon by this office in reaching its conclusion that information held by a receiver of an insurance company is held on behalf of the supervising court. See Open Records Letter No. 96-0804 (1996). In *El Paso Electric*, the court concluded that, as the receiver is subject to removal by the State Board of Insurance (the "board"), the receiver's compensation remains within the board's control, and the receiver performs a public,

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<sup>1</sup>As Webb does not argue that section 552.110 excepts its bid proposal from required public disclosure, we do not address that exception.

regulatory function, the receiver is acting on behalf of the State Board of Insurance for purposes of chapter 105 of the Texas Civil Practice and Remedies Code, which allows a litigant to recover fees from a "state agency" in certain instances. *El Paso Electric Co. v. Texas Department of Insurance*, No. 95-0943, 1996 WL 714313, at \*4 (Tex. Dec. 13, 1996). In addressing the department's arguments that the receiver is an agent of the receivership court, the Texas Supreme Court stated:

While the receivership court retains a certain amount of supervisory control under article 21.28, the *Betts* trilogy makes clear that the Legislature also intended to vest a significant amount of control in the executive branch, specifically for the purpose of creating a centralized, efficient liquidation system. Indeed, we indicated in *Betts I* that the purpose of these types of statutes 'was to provide for an economical liquidation of insolvent insurance companies through the agency of a state department, and to prevent the waste of assets which theretofore had been occasioned through (judicial) receiverships.'

*Id.* at \*6 (citations omitted). We assume, for purposes of this ruling, that all of the requested information was submitted to the Commissioner of Insurance in his capacity as receiver of specified insurance companies. Consequently, we conclude that the receiver does not hold the particular requested information here on behalf of the receivership court but on behalf of the board. Therefore, the information is subject to the provisions of chapter 552. Further, we believe that, based on the current state of the law, Open Records Letter No. 96-0804 (1996) is now erroneous and must be overruled to the extent that it is contrary to the supreme court's holding in *El Paso Electric*.

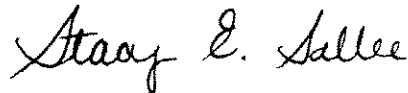
We now address Webb's claimed exceptions to disclosure. Section 552.104 excepts information that, if released, would give advantage to a competitor or bidder. The purpose of this exception is to protect the interests of a governmental body in competitive bidding situations. See Open Records Decision No. 592 (1991). Section 552.104 is not designed to protect the interests of private parties that submit information to a governmental body. *Id.* at 8-9. Therefore, this exception will not protect the requested information from disclosure.

Section 552.111 excepts "an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." In Open Records Decision No. 615 (1993), this office reexamined the predecessor to the section 552.111 exception in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.--Austin 1992, no writ), and held that section 552.111 excepts only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. An agency's policymaking functions, however, do not encompass internal administrative or personnel matters; disclosure of information relating to such matters will not inhibit free discussion among agency personnel as to policy issues. Open Records Decision No. 615 (1993) at

5-6. In addition, section 552.111 does not except from disclosure purely factual information that is severable from the opinion portions of internal memoranda. *Id.* at 4-5. You state that the department has released to the requestor the total scores for each of the proposals but contend that the scores given by each member of the selection committee by category, the department would be releasing its recommendations reflecting its deliberative and policymaking processes. *See* Open Records Letter No. 94-0587 (1994). We agree. Therefore, the department may withhold from required public disclosure the evaluation sheets.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



Stacy E. Sallee  
Assistant Attorney General  
Open Records Division

SES/ch

Ref.: ID# 104245

Enclosures: Submitted documents

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